

By: Nelson

S.B. No. 408

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Public Utility Commission of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 12.005, Utilities Code, is amended to read as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2011 [~~2005~~].

SECTION 2. Section 12.059, Utilities Code, is amended by adding Subsection (c) to read as follows:

(c) A person who is appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 3. Section 12.102, Utilities Code, is amended to read as follows:

Sec. 12.102. DUTIES OF EMPLOYEES. The commission shall develop and implement policies that clearly separate [~~define~~] the policymaking [~~respective~~] responsibilities of the commission and the management responsibilities of the commission employees.

SECTION 4. Section 12.153, Utilities Code, is amended to read as follows:

Sec. 12.153. RELATIONSHIP WITH TRADE ASSOCIATION. A person may not serve as a commissioner or be a commission employee who is employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), ~~[exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule]~~ if the person is:

(1) an officer, employee, or paid consultant of a trade association; or

(2) the spouse of an officer, manager, or paid consultant of a trade association.

SECTION 5. Subchapter A, Chapter 14, Utilities Code, is amended by adding Section 14.0025 to read as follows:

Sec. 14.0025. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

1 (b) The commission's procedures relating to alternative
2 dispute resolution must conform, to the extent possible, to any
3 model guidelines issued by the State Office of Administrative
4 Hearings for the use of alternative dispute resolution by state
5 agencies.

6 (c) The commission shall designate a trained person to:

7 (1) coordinate the implementation of the policy
8 adopted under Subsection (a);

9 (2) serve as a resource for any training needed to
10 implement the procedures for negotiated rulemaking or alternative
11 dispute resolution; and

12 (3) collect data concerning the effectiveness of those
13 procedures, as implemented by the commission.

14 SECTION 6. Subchapter B, Chapter 14, Utilities Code, is
15 amended by adding Section 14.059 to read as follows:

16 Sec. 14.059. TECHNOLOGY POLICY. The commission shall
17 implement a policy requiring the commission to use appropriate
18 technological solutions to improve the commission's ability to
19 perform its functions. The policy must ensure that the public is
20 able to interact with the commission on the Internet.

21 SECTION 7. Section 15.023, Utilities Code, is amended by
22 amending Subsections (b) and (c) and adding Subsection (d) to read
23 as follows:

24 (b) The penalty for a violation may be in an amount not to
25 exceed \$25,000 [~~\$5,000~~]. Each day a violation continues or occurs
26 is a separate violation for purposes of imposing a penalty.

27 (c) The commission by rule shall establish a classification

1 system for violations that includes a range ~~[The amount]~~ of ~~[an]~~
2 administrative penalties that may be assessed for each class of
3 violation ~~[penalty shall be]~~ based on:

4 (1) the seriousness of the violation, including:

5 (A) the nature, circumstances, extent, and
6 gravity of a prohibited act; and

7 (B) the hazard or potential hazard created to the
8 health, safety, or economic welfare of the public;

9 (2) the economic harm to property or the environment
10 caused by the violation;

11 (3) the history of previous violations;

12 (4) the amount necessary to deter future violations;

13 (5) efforts to correct the violation; and

14 (6) any other matter that justice may require.

15 (d) The classification system established under Subsection
16 (c) shall provide that a penalty in an amount that exceeds \$5,000
17 may be assessed only if the violation is included in the highest
18 class of violations in the classification system.

19 SECTION 8. Section 15.051(b), Utilities Code, is amended to
20 read as follows:

21 (b) The commission shall keep for a reasonable period
22 information about each complaint filed with the commission that the
23 commission has authority to resolve. The information shall
24 include:

25 (1) the date the complaint is received;

26 (2) the name of the complainant;

27 (3) the subject matter of the complaint;

1 (4) a record of each person contacted in relation to
2 the complaint;

3 (5) a summary of the results of the review or
4 investigation of the complaint; and

5 (6) if the commission took no action on the complaint,
6 an explanation of the reason the complaint was closed without
7 action.

8 SECTION 9. Section 39.151, Utilities Code, is amended by
9 amending Subsections (b), (d), (e), and (g) and adding Subsection
10 (g-1) to read as follows:

11 (b) "Independent organization" means an independent system
12 operator or other person that is sufficiently independent of any
13 producer or seller of electricity that its decisions will not be
14 unduly influenced by any producer or seller. ~~[An entity will be
15 deemed to be independent if it is governed by a board that has three
16 representatives from each segment of the electric market, with the
17 consumer segment being represented by one residential customer, one
18 commercial customer, and one industrial retail customer.]~~

19 (d) An independent organization certified by the commission
20 for a power region shall establish and enforce procedures,
21 consistent with this title and the commission's rules, relating to
22 the reliability of the regional electrical network and accounting
23 for the production and delivery of electricity among generators and
24 all other market participants. The procedures shall be subject to
25 commission oversight and review. An independent organization
26 certified by the commission is directly responsible and accountable
27 to the commission. The commission has complete authority to

1 oversee and investigate the organization's finances, budget, and
2 operations as necessary to ensure the organization's
3 accountability and to ensure that the organization adequately
4 performs the organization's functions and duties. The organization
5 shall fully cooperate with the commission in the commission's
6 oversight and investigatory functions. The commission may
7 decertify an organization that does not adequately perform the
8 organization's functions or duties or does not comply with this
9 section.

10 (e) The commission may authorize an independent
11 organization that is certified under this section to charge a
12 reasonable and competitively neutral rate to wholesale buyers and
13 sellers to cover the independent organization's costs. The
14 commission shall investigate the organization's cost efficiencies,
15 salaries and benefits, and use of debt financing and may require the
16 organization to provide any information needed to effectively
17 evaluate the organization's budget and the reasonableness and
18 neutrality of a rate or proposed rate. The commission shall work
19 with the organization to establish the detail of information, both
20 current and historical, and the time frames the commission needs to
21 effectively evaluate a rate or a rate request.

22 (g) To maintain certification as an independent
23 organization under this section, an organization's [~~If it amends~~
24 ~~its governance rules to provide that its governing body is composed~~
25 ~~as prescribed by this subsection, the existing independent system~~
26 ~~operator in ERCOT will meet the criteria provided by Subsection (a)~~
27 ~~with respect to ensuring access to the transmission systems for all~~

~~buyers and sellers of electricity in the ERCOT region and ensuring the reliability of the regional electrical network. To comply with this subsection, the~~ governing body must be composed of persons specified by this section and selected in accordance with formal bylaws or protocols of the organization. The bylaws or protocols must be approved by the commission and must reflect the input of the commission. The bylaws or protocols must prescribe professional qualifications for selection as a member, require the use of a professional search firm to identify candidates for membership, and specify the process by which appropriate stakeholders elect members. The process must allow for commission input in identifying candidates. The governing body must be composed of:

(1) the chairman of the commission as an ex officio nonvoting member;

(2) the counsellor as an ex officio voting member representing residential and small commercial consumer interests;

(3) the chief executive officer ~~[director]~~ of the independent system operator as an ex officio voting member;

(4) six market participants elected by their respective market segments to serve one-year terms, with:

(A) one representing independent generators;

(B) one representing investor-owned utilities;

(C) one representing power marketers;

(D) one representing retail electric providers;

(E) one representing municipally owned utilities; and

(F) one representing electric cooperatives ~~[four~~

~~representatives of the power generation sector as voting members];~~

(5) one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a one-year term ~~[four representatives of the transmission and distribution sector as voting members];~~

(6) one member representing large commercial consumer interests selected by the outgoing large commercial consumer representative to serve a one-year term ~~[four representatives of the power sales sector as voting members]; and~~

(7) five members unaffiliated with any market segment and selected by the other members of the governing body to serve three-year terms ~~[the following people as voting members, appointed by the commission:~~

~~[(A) one representative of residential customers,~~

~~[(B) one representative of commercial customers,~~
~~and~~

~~[(C) one representative of industrial customers].~~

~~[The four representatives specified in each of Subdivisions (4), (5), and (6) shall be selected in a manner that ensures equitable representation for the various sectors of industry participants.]~~

(g-1) The presiding officer of the governing body must be one of the members described by Subsection (g)(7).

SECTION 10. Subchapter D, Chapter 39, Utilities Code, is amended by adding Sections 39.1511, 39.1512, and 39.1515 to read as

1 follows:

2 Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN
3 INDEPENDENT ORGANIZATION. (a) Meetings of the governing body of
4 the independent organization certified under Section 39.151 and
5 meetings of a subcommittee of the governing body must be open to the
6 public. The bylaws of the independent organization and the rules of
7 the commission may provide for the governing body or subcommittee
8 to enter into executive session closed to the public to address
9 sensitive matters such as confidential personnel information,
10 contracts, lawsuits, competitively sensitive information, or other
11 information related to security of the regional electrical network.

12 (b) The bylaws of the independent organization and rules of
13 the commission must ensure that a person interested in the
14 activities of the independent organization has an opportunity to
15 obtain at least seven days' advance notice of meetings and the
16 planned agendas of the meetings and an opportunity to comment on
17 matters under discussion at the meetings.

18 Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE
19 INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN
20 DECISION. (a) If a matter comes before the governing body of an
21 independent organization certified under Section 39.151 and a
22 member or a person that member represents has a direct interest in
23 that matter, the member shall publicly disclose the fact of that
24 interest to the governing body at a public meeting of the body. The
25 member shall recuse himself or herself from the governing body's
26 deliberations and actions on the matter and may not vote on the
27 matter or otherwise participate in a governing body decision on the

1 matter.

2 (b) A disclosure made under Subsection (a) shall be entered
3 in the minutes of the meeting at which the disclosure is made.

4 (c) The fact that a member is recused from a vote or decision
5 by application of this section does not affect the existence of a
6 quorum.

7 Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An
8 independent organization certified under Section 39.151 shall
9 contract with a private person selected by the commission to act as
10 the state's wholesale electric market monitor and to detect and
11 prevent market manipulation strategies.

12 (b) The independent organization shall provide to the
13 personnel of the market monitor:

14 (1) full access to the organization's main operations
15 center; and

16 (2) other support and cooperation the commission
17 determines is necessary for the market monitor to perform the
18 market monitor's functions.

19 (c) The independent organization shall use money from the
20 rate authorized by Section 39.151(e) to pay for the market
21 monitor's activities.

22 (d) The commission is responsible for ensuring that the
23 market monitor has the resources, expertise, and authority
24 necessary to monitor the wholesale electric market effectively and
25 shall adopt rules and perform oversight of the market monitor as
26 necessary. The commission by rule shall define:

27 (1) the market monitor's monitoring responsibilities;

1 (2) the standards for funding the market monitor,
2 including staffing requirements;

3 (3) qualifications for personnel of the market
4 monitor; and

5 (4) ethical standards for the market monitor and the
6 personnel of the market monitor.

7 (e) In adopting rules governing the standards for funding
8 the market monitor, the commission shall consult with a
9 subcommittee of the independent organization's governing body to
10 receive information on how money is or should be spent for
11 monitoring functions. Rules governing ethical standards must
12 include provisions designed to ensure that the personnel of the
13 market monitor are professionally and financially independent from
14 market participants. The commission shall develop and implement
15 policies that clearly separate the policymaking responsibilities
16 of the commission and the operational responsibilities of the
17 market monitor.

18 (f) The market monitor immediately shall report directly to
19 the commission any potential market manipulations and any
20 discovered or potential violations of commission rules or rules of
21 the independent organization.

22 (g) The personnel of the market monitor may communicate with
23 commission staff on any matter without restriction.

24 (h) The market monitor annually shall submit to the
25 commission and the independent organization a report that
26 identifies market design flaws and recommends methods to correct
27 the flaws. The commission and the independent organization shall

1 review the report and evaluate whether changes to rules of the
2 commission or the independent organization should be made.

3 SECTION 11. Section 39.903(e), Utilities Code, as amended
4 by Chapters 1394, 1451, and 1466, Acts of the 77th Legislature,
5 Regular Session, 2001, is reenacted and amended to read as follows:

6 (e) Money in the system benefit fund may be appropriated to
7 provide funding solely for the following regulatory purposes, ~~and~~
8 in the following order of priority:

9 (1) programs to:

10 (A) assist low-income electric customers by
11 providing the 10 percent reduced rate prescribed by Subsection (h);
12 and

13 (B) provide one-time bill payment assistance to
14 electric customers who are or who have in their households one or
15 more seriously ill or disabled low-income persons and who have been
16 threatened with disconnection for nonpayment;

17 (2) customer education programs, administrative
18 expenses incurred by the commission in implementing and
19 administering this chapter, and expenses incurred by the office
20 under this chapter;

21 (3) programs to assist low-income electric customers
22 by providing the targeted energy efficiency programs described by
23 Subsection (f)(2);

24 (4) the school funding loss mechanism provided by
25 Section 39.901;

26 (5) programs to assist low-income electric customers
27 by providing the 20 percent reduced rate prescribed by Subsection

1 (h); and

2 (6) reimbursement to the commission and the Health and
3 Human Services Commission [~~Texas Department of Human Services~~] for
4 expenses incurred in the implementation and administration of an
5 integrated eligibility process created under Section 17.007 for
6 customer service discounts relating to retail electric service,
7 including outreach expenses the commission determines are
8 reasonable and necessary.

9 SECTION 12. Section 39.903, Utilities Code, is amended by
10 adding Subsection (j-1) to read as follows:

11 (j-1) The commission shall adopt rules governing the bill
12 payment assistance program provided under Subsection (e)(1)(B).
13 The rules must provide that a customer is eligible to receive the
14 assistance only if the assistance is necessary to prevent the
15 disconnection of service for nonpayment of bills and the electric
16 customer is or has in the customer's household one or more seriously
17 ill or disabled low-income persons whose health or safety may be
18 injured by the disconnection. The commission may prescribe the
19 documentation necessary to demonstrate eligibility for the
20 assistance and may establish additional eligibility criteria. The
21 Health and Human Services Commission, on request of the commission,
22 shall assist in the adoption and implementation of these rules.

23 SECTION 13. (a) The Public Utility Commission of Texas
24 shall conduct a comprehensive review of the reporting requirements
25 relating to telecommunications providers that are prescribed by
26 statute or commission rules.

27 (b) In conducting the review, the Public Utility Commission

of Texas shall:

(1) solicit input and assistance from appropriate affected persons, as that term is defined by Section 11.003, Utilities Code; and

(2) consider:

(A) the manner in which information included in a report is used;

(B) whether information included in a report is duplicative of information included in a different report; and

(C) whether the requirements relating to a report the commission determines is necessary can be changed to make the reporting process more efficient.

(c) The Public Utility Commission of Texas shall conclude the review required by this section not later than September 30, 2006, and shall report to the legislature on the results of the review. The report must include:

(1) specific recommendations on which reports the commission determines are necessary and which are not necessary;

(2) for a report the commission determines is necessary, whether the requirements relating to the report can be changed to make the reporting process more efficient; and

(3) the actions the commission has taken or will take to amend commission rules to reflect the results of the review.

(d) If the Public Utility Commission of Texas determines that legislation is necessary or appropriate to eliminate or change reporting requirements prescribed by statute, the commission shall include those recommendations in the biennial report to the

1 legislature required by Section 52.006, Utilities Code.

2 SECTION 14. Section 52.254, Utilities Code, is repealed.

3 SECTION 15. The change in law made by this Act relating to
4 qualifications and eligibility to serve as a commissioner or to be
5 employed with the Public Utility Commission of Texas applies only
6 to a commissioner or employee appointed or employed after the
7 effective date of this Act. A commissioner or employee of the
8 Public Utility Commission of Texas who is serving or employed on the
9 effective date of this Act is governed by the law as it existed
10 immediately before the effective date of this Act, and the former
11 law is continued in effect for that purpose.

12 SECTION 16. The change in law made by this Act to Section
13 15.023, Utilities Code, applies only to a violation committed on or
14 after the effective date of this Act. A violation committed before
15 the effective date of this Act is governed by the law in effect when
16 the violation was committed, and the former law is continued in
17 effect for that purpose.

18 SECTION 17. An independent organization certified by the
19 Public Utility Commission of Texas before September 1, 2005, shall
20 modify the organization's governing body to comply with Section
21 39.151(g), Utilities Code, as amended by this Act, not later than
22 September 1, 2006. On or after September 1, 2006, the Public
23 Utility Commission of Texas may decertify an independent
24 organization whose governing body does not comply with Section
25 39.151 (g), Utilities Code, as amended by this Act.

26 SECTION 18. This Act takes effect September 1, 2005.